

UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

IN RE:)
)
)
Southeastern Chemical Corporation,) Case No. B05-14502C-11G
)
Debtor.)
_____)

MEMORANDUM OPINION AND ORDER

THIS MATTER came on for hearing on November 30, 2006 upon the Motion for Authority to Use Funds (the “Motion”), filed by the above-referenced debtor (the “Debtor”) on November 3, 2006; Dirk W. Siegmund appearing on behalf of the Debtor, Benjamin A. Kahn appearing on behalf of Virginia Lynch, and Sarah D. Bruce appeared on behalf of the United States Bankruptcy Administrator, and based upon the pleadings filed, evidence presented, and representations made, the Court makes the following findings of fact and conclusions of law:

1. On December 4, 2005 (the “Petition Date”), the Debtor filed a voluntary petition under Title 11 of the United States Bankruptcy Code. Since the filing, the Debtor has operated as a debtor-in-possession.
2. The Debtor is an “insurance fiduciary” as defined in N.C. Gen Stat. § 58-50-40.¹
3. The coverage extending from the group health insurance policy that the Debtor maintained on behalf of its employees with Blue Cross Blue Shield of North Carolina lapsed on December 1, 2005, three days prior to the Petition Date.

¹That statute defines an “insurance fiduciary” as “any person, employer, principal, agent, trustee, or third party administrator who is responsible for the payment of group health or group life insurance premiums or who is responsible for funding a group health plan.” N.C. Gen. Stat. § 58-50-40 (emphasis added).

4. On the petition date, Betty Taylor was an employee of the Debtor and was, along with her husband, Ralph L. Taylor, enrolled in the Debtor's group health insurance policy with Blue Cross Blue Shield of North Carolina, which had lapsed three days prior to the Petition Date. During the period between December 4, 2005 and January 13, 2006, when Mrs. Taylor's employment with the Debtor ceased, Mr. Taylor incurred significant medical expenses.

5. Pursuant to N.C. Gen. Stat. § 58-50-40(b), insurance fiduciaries may not cause the cancellation of a group insurance policy by a willful failure to pay and are required to provide forty-five (45) days notice to persons covered under a group insurance policy before terminating coverage under the policy. Further, pursuant to N.C. Gen. Stat. § 58-50-40(c), a violation of subsection (b) will cause the insurance fiduciary to be guilty of a Class H Felony.

6. Pursuant to N.C. Gen. Stat. § 58-50-40(e), an obligation to make payments to persons covered under the terminated policy for the violation of subsection (b), and subsequent expenses incurred by such persons, will only arise after the insurance fiduciary has been convicted under subsection (c) of N.C. Gen. Stat. § 58-50-40. On the Petition Date, the Debtor had not been convicted under subsection (c) of N.C. Gen. Stat. § 58-50-40. Therefore, on the Petition Date, the Debtor was not obligated to make any payments to Ms. Taylor or Mr. Taylor pursuant to N.C. Gen. Stat. § 58-50-40. Thus, although Mr. Taylor incurred expenses post-petition due to his lack of insurance coverage, the Debtor is not obligated to make restitution to him because there has been no conviction under subsection (c) of N.C. Gen. Stat. § 58-50-40.

7. Even if there were a conviction against the Debtor, Mr. Taylor's claim would not be entitled to administrative expense treatment because the claim arose prepetition and not from a transaction between Mr. Taylor and the estate that resulted in a benefit to the estate.²

² See 4 Collier on Bankruptcy ¶ 503.06 (Alan N. Resnick & Henry J. Sommers eds., 15th ed. rev. 2006).

8. Neither Mr. Taylor nor the Debtor proved that Mr. Taylor is entitled to an administrative expense.³ For the reasons stated above, the claim of Mr. Taylor constitutes a general unsecured claim, not an administrative expense claim. The Debtor may not use a portion of the funds currently held in this estate to pay the claim of Mr. Taylor as an administrative expense.

Therefore, it is hereby ORDERED ADJUDGED AND DECREED that the Motion is DENIED.

³“The traditional presumption favoring ratable distribution among all holders of unsecured claims counsels strict construction of the Bankruptcy Code provisions governing requests for priority payment of administrative expenses. . . . The burden of proving entitlement to priority payment as an administrative expense therefore rests with the party requesting it.” In re Hemingway Transport, Inc., 954 F.2d 1, 4-5 (1st Cir. 1992) (internal citations omitted).

Southeastern Chemical Corporation
B05-14502
Chapter 11

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